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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,662	11/25/2003	Taner Tuken	29766-70636	5955
7590 07/25/2005			EXAMINER	
BARNES & THORNBURG 11 South Meridian Street Indianapolis, IN 46204			MCCALL, ERIC SCOTT	
			ART UNIT	PAPER NUMBER
			2855	

DATE MAILED: 07/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

<b>Office Action Summary</b>	<b>Application No.</b> 10/721,662	<b>Applicant(s)</b> TUKEN ET AL.	
	<b>Examiner</b> Eric S. McCall	<b>Art Unit</b> 2855	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 May 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30-61 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6, 8, 9 and 15 is/are rejected.
- 7) ☒ Claim(s) 3-5, 7, 10-14 and 16-29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**SYSTEM FOR ESTIMATING A QUANTITY OF PARASITIC  
LEKAGE FROM A FUEL INJECTION SYSTEM**

**FINAL OFFICE ACTION**

In response to the Applicant's amendment received May 04, 2005.

**TITLE**

In response to the Applicant's amendment, the objection to the title as set forth in the previous office action (Feb. 01, 2005) has been overcome.

**SPECIFICATION**

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. The Applicant's cooperation is requested in correcting any errors of which the Applicant may become aware of in the specification.

**CLAIMS**

**35 U.S.C. § 102**

In response to the Applicant's arguments, the rejection of claims 1-4, 15-17, 22, 23, 26-35, 46-48, 55, and 58-60 under 35 U.S.C. 102(b) over Antonioli et al. (5,773,716) as set forth in the previous office action has been overcome.

**Obviousness Type Double Patenting**

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 2, 6, 8, 9, and 15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 5-8 of U.S. Patent No. 6,823,834. Although the conflicting claims are not identical, they are not patentably distinct from each other.

With regards to claim 1, each and every limitation as set forth therein is suggested by claim 6 (which includes the subject matter of claims 1, 2, 3, and 5) of said patent. Thus, the invention of claim 1 has been set forth in the patent's claim 6.

With regards to claim 2, the claim combination of claims 6/5/3/2/1 (see col. 45, lines 16/17) of said patent claims the subject matter thereof.

With regards to claim 6, claim 6 of said patent claims the subject matter thereof.

With regards to claim 8, claim 8 of said patent claims the subject matter thereof.

With regards to claim 9, claim 7 of said patent claims the subject matter thereof.

With regards to claim 15, claim 6 claims the subject matter thereof.

Response to Arguments

The Applicant's arguments regarding the obviousness-type double patenting rejection as set forth above have been considered but have not been found to be persuasive.

Specifically, the Applicant has argued that their claim 1 requires an estimate of a quantity of parasitic fuel leakage as a function of the pressure signal corresponding to when no fuel is being supplied to or drawn from the fuel injection system, and that the first and second fuel pressures of the patent correspond to a period which include fuel injection.

However, the Applicant then continues by stating that the first pressure is that after the fuel pump is disabled and prior to fuel injection. Thus, as the Examiner has relied upon, this first pressure is a pressure in the fuel injection system when no fuel is being supplied to or drawn from the fuel injection system.

Furthermore, the Applicant's claim 1, of which the above arguments are directed, does not require "a pressure to be measured" when no fuel is being supplied to or drawn from the fuel injection system as the Applicant has argued.

Thus, claims 1, 2, 6, 8, 9, and 15 are not in condition for allowance.

*Allowable Subject Matter*

Claims 3-5, 7, 10-14, and 16-29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims because the prior art fails to teach or suggest the corresponding claimed subject matter.

Claims 30-61 have been found to be allowable over the prior art.

**CONCLUSION**


**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Eric S. McCall whose telephone number is (571) 272-2183.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Eric S. McCall  
Primary Examiner  
Art Unit 2855  
July 21, 2005